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Supreme Court of the United States

OCTOBER TERM, 1955.

No. 669.

ATLANTIC COAST LINE RAILROAD COMPANY,
a Corporation, *Petitioner*,

vs.

WILBUR C. KING *et al.*, As Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, *Respondents*.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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OPINIONS BELOW.

Arranged in proper sequence, the orders provoking the present petition for writ of certiorari are as follows:

1. Order of the Florida Railroad and Public Utilities Commission, dated June 30, 1955 (Appendix A).

2. Order of the Supreme Court of Florida, dated October 11, 1955, granting separate motions of the Respondents to quash a petition for certiorari to review the above order of the Commission and dismissing the proceedings (Appendix C).

3. Order of the Supreme Court of Florida, dated November 18, 1955, denying petition for rehearing (Appendix D).

And although the Commission order contains a review of the case, findings of fact, conclusions of law to the effect that the existing freight and passenger depots of Petitioner are not adequate to serve the public convenience and necessity, and directs Petitioner to remove the stations from their present locations and to construct and operate new, modern and adequate facilities at such locations in the city consistent with the public interest, safety and welfare as may be determined by the Commission pursuant to a further hearing, neither its order nor those of the Supreme Court of Florida was accompanied by written opinion.

JURISDICTION.

The Supreme Court of Florida specifically decided that the Commission order of June 30, 1955, was not a final order and for that reason, and without any attempt to pass upon the merits of the controversy, quashed the petition for review and dismissed the proceedings. Its own order hence was not a final judgment within the meaning of 28 U. S. Code, Sec. 1257(3), and any consideration of the supposed grounds under which Petitioner invokes the jurisdiction of this Court becomes unnecessary.

QUESTION PRESENTED.

The question posed by Petitioner is constructed upon the erroneous theory that (1) the Commission order will result in the destruction of private property without compensation, (2) that it is in defiance of a former judgment of the United States Court of Appeals for the Fifth Circuit, and (3) that the Supreme Court of Florida has affirmed the action of the Commission. The first and second of these assumptions relate to the merits of the controversy and at this stage of the case are premature. The third assumption is contradicted by the record which affirmatively shows that the Supreme Court of Florida, being of the opinion that the order of the Commission is purely interlocutory in character, refused to consider the case on the merits until the administrative process comes to its end, neither affirming nor reversing, but merely dismissing for want of a final appealable order. The actual problem with which this Court is confronted may be stated as follows:

> Where a public service commission separates the issues in a depot removal case, trying first the question of adequacy and reserving for later consideration the site, plans and economic factors involved in the erection of such new depots as the Commission may find necessary in the public interest, and where the Supreme Court of the State, upon appeal from an order finding the existing depots inadequate and directing their removal to such location as may be determined upon a trial of the reserved issue, decides that the order so rendered is interlocutory in character and ought not to be reviewed on its merits until the administrative process is finally ended, is the judgment of the State Supreme Court final within the meaning of 28 U. S. C. A., Sec. 1257(3)?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

No useful purpose can be served by speculating in respect to what statutory and constitutional provisions may eventually engage the attention of this Court after the Railroad Commission of Florida completes the case and the Supreme Court of Florida reviews its final action. At this particular time the only question is whether the order of the Florida Supreme Court is a final judgment. If this Court should decide that it is, the Federal questions can be explored in detail in briefs on the merits, otherwise any immediate discussion of them would amount only to an exercise in hypotheticals.

STATEMENT OF THE CASE.

On April 7, 1954, the City filed its petition with the Commission alleging in substance that the existing depots of the Railroad in St. Petersburg were inadequate and praying that they be relocated at new sites in keeping with the public interest. In due course the Railroad answered, denying the material averments of the complaint, challenging the jurisdiction of the Commission and asserting other reasons for dismissal of the proceeding.

Before Respondent filed its response to the petition, the City sought leave to take the Railroad's deposition by oral and written interrogatories, a substantial portion of the latter relating to a comparison of operating costs as between the existing depot locations and such new sites as might eventually be selected. The Railroad objected to answering any of these questions and after several hearings the Commission ultimately decided to postpone a decision on the matter until the City first demonstrated that the present stations were in fact in-

adequate. A public hearing for this purpose was scheduled for hearing at St. Petersburg on October 5, 1955, and when it convened the Commission announced that two primary questions were involved, to-wit: (1) Should the present freight and passenger stations of the Atlantic Coast Line Railroad Company at St. Petersburg be relocated and replaced at a new location by new, modern and adequate facilities capable of fully meeting the public convenience and necessity, and (2) Where should such new facilities be located. By order of the Commission the October hearing was limited to the first question. At the same time the Commission announced that a determination of the second question would be the subject matter of further hearings if the Commission should enter an affirmative order concerning the first question.

In the course of the October and subsequent adjourned hearings the parties offered voluminous testimony and exhibits to sustain their respective contentions on the question of adequacy, following which the Commission heard oral argument, considered written briefs, and, on June 30, 1955, entered its order in which after an extensive review of the entire case, including elaborate findings of fact, the Railroad was directed to remove its freight and passenger depots from their present locations in St. Petersburg and to construct and operate new, modern and adequate freight and passenger depots capable of fully meeting the convenience and necessities of the public, at such location or locations in said city consistent with the public interest, safety and welfare, as may be determined and directed by the Commission pursuant to a further hearing to be held at a time and place subsequently to be announced by the Commission.*

*Each of the foregoing steps is recited in the Commission's Order, See Appendix A.

A petition for rehearing having been made and denied, the Commission set the case for public hearing at 9:30 A. M., October 4, 1955, in the City Commission Hearing Room, St. Petersburg, Florida, for the purpose of receiving evidence from the parties in connection with the determination of the location of the new freight and passenger stations. Prior to the latter date the Railroad filed in the Supreme Court of Florida its petition for certiorari to review the Commission order of June 30, 1955, whereupon the hearing set for October 4, 1955, was cancelled.

In the Supreme Court of Florida the City and the Commission filed identical motions to quash (Appendix B) the petition for certiorari and to dismiss the appellate proceedings on the grounds that (1) the petition had been prematurely filed, and (2) the challenged order did not possess that element of finality which is a prerequisite to judicial review. The Supreme Court of Florida heard oral argument on these motions, received written briefs and on October 11, 1955 (Appendix C), granted the motions. A petition for rehearing was denied (Appendix D) November 18, 1955, and the present petition has followed.

REASONS FOR DENYING THE WRIT.

As a general rule, the courts do not review determinations or decisions of an administrative body which are not or have not become final. *Federal Power Commission* v. *Metropolitan Edison Company*, 304 U. S. 375, 58 S. Ct. 963, 82 L. Ed. 1408, 1414; *Myers* v. *Bethlehem Shipbldg. Corp.*, 202 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638, 644. They interfere with such a board neither at an intermediate point in its procedure, nor to overthrow a

mere preliminary, procedural, interim or interlocutory order, even though in a particular case time and expense might be saved by permitting direct review of an interlocutory order instead of requiring the case to proceed to final decision. *Aluminum Co. of America* v. *Federal Power Commission*, 130 F. 2d 445, 76 U. S. App. D. C. 182. Administrative orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process. *Chicago & S. Air Lines* v. *Waterman S. S. Corp.*, 333 U. S. 103, 68 S. Ct. 431, 92 L. Ed. 568; *United States* v. *Los Angeles & S. L. R. Co.*, 273 U. S. 299, 47 S. Ct. 413, 71 L. Ed. 651; *United States* v. *Illinois C. R. Co.*, 244 U. S. 82, 37 S. Ct. 584, 61 L. Ed. 1007; *Rochester Teleph. Corp.* v. *United States*, 307 U. S. 125, 59 S. Ct. 754, 83 L. Ed. 1147, 1151.

The foregoing principles are of particular importance in Florida, for in this State Section 5 of Article V of the State Constitution confers jurisdiction upon the Supreme Court to review an order of the Railroad and Public Utilities Commission through common law writ of certiorari, and through that method alone. And since common law writs of certiorari are appropriate only for the purpose of reviewing *final judgments or orders*, the Supreme Court was under especial obligation to examine the record in this case with caution in order to determine whether the challenged order marked the end of the controversy, administratively speaking, or merely a milepost along the way. *Atlantic Coast Line R. Co.* v. *Carter*, 66 So. 2d (Fla.) 430; *Atlantic Coast Line R. Co.* v. *Railroad Commission*, 149 Fla. 245, 5 So. 2d 708; *Florida Motor Lines, Inc.*, v. *Railroad Commissioners*, 100 Fla. 538, 129 So. 876. In discharging the duty imposed upon it by the Constitution, the Supreme Court of Florida ad-

judged the order under attack to be interlocutory in character, affording no basis for judicial interference, at least not until the administrative process reached its final end. This conclusion is inescapable, otherwise the Court would have accepted jurisdiction, heard the case on the merits and either approved the action of the Commission by affirmance or disapproved by reversal. It did neither and the result is that the case returns to the Commission for completion, after which, and this Respondents freely concede, Petitioner will be entitled to review in the Supreme Court of Florida every ruling of the Commission from beginning to end which it may regard as prejudicial. And in the event of an adverse decision at the hands of the State Supreme Court, Petitioner, this time armed with the final judgment now so sadly lacking, may apply anew to this Court for the identical relief which it now prematurely demands. It necessarily follows that the only prejudice which Petitioner has thus far encountered consists of a mandate to finish the case before the Commission. This amounts neither to a final judgment nor the denial of any right guaranteed by the Federal Constitution.

The reasons which must have induced the Supreme Court of Florida to decide as it did are easy to understand and clearly correct. It had before it a case in which, like any other involving relocation of railroad depots, the Commission was initially confronted with the question of whether the existing stations were adequate. If it found that they were not, the further duty arose of considering a new site, plans, specification and cost, including the task of deciding whether the expense to the carrier would be so unreasonably out of proportion to the convenience afforded the public as to impose an unlawful burden. The Court undoubtedly recognized the tremendous importance

of this second step, because years before in *State ex rel. Railroad Com'rs* v. *Florida East Coast Railway Co.*, 67 Fla. 83, 64 So. 441, it had expressly held:

> "A proper test is not whether the facilities required by the order are in fact necessary, but whether they are reasonable for the convenience and safety of the public to be served, and the expense to the carrier is not so unreasonably aut of proportion to the convenience afforded to the public as to impose an unlawful burden upon the carrier. No question of confiscation is involved."

The Court was further advised by the record, briefs and argument that although the Commission conceivably could have resolved all the issues in one comprehensive hearing, it elected in the exercise of a sound discretion (influenced, no doubt, by the Railroad's objections to the production of records pertaining to the secondary steps, Appendix A) to try the case in logical steps, *i. e.*, to ascertain first if the existing depots were in fact inadequate, and afterwards, if necessary, examine proposed new locations, types of stations, parking, access, cost and related factors, in order ultimately to determine whether the final balance lay in favor of carrier hardship or public convenience and necessity. The Commission announced its intended program in clear and unmistakable language. It adhered thereto consistently (Appendix E) as the public hearings progressed. Upon a record confined exclusively to evidence pertaining exclusively to the issue of adequacy, it weighed the conflicting and voluminous testimony and exhibits and closed the first chapter with a finding in favor of the City, promptly noting the need for and its intention of moving into the next and second phase, viz., the selection of an appropriate site for the relocation tentatively adjudged as necessary in the public interest. The record nowhere re-

flects the slightest objection from anyone as to procedure, in fact excerpts from the proceedings included in Appendix E demonstrate the promptness with which first one side, then the other, reminded its adversary and the Commission not to encroach upon the reserved issues. Faced with these facts the Court presumably felt that any order which disposed of but one of several issues was perforce interlocutory; that the order was currently unenforceable because the Railroad, even if willing to obey it, knew not where to go, what kind of depots to erect or how much to spend in the project; that in any event the Commission upon further hearing was at liberty to decide in keeping with *State ex rel. Railroad Com'rs* v. *Florida East Coast Railway Company*, 67 Fla. 83, 64 So. 443, that an appropriate location for new stations is not available, or too expensive, or at least costly enough to outweigh the public's stake in the transposition. If these were the reasons which prompted the Court's refusal to halt the Commission case at the half-way point, they are fundamentally sound and in accord with the overwhelming weight of judicial authority throughout the nation.

Finally, and tested by Petitioner's own citations, *Department of Banking* v. *Pink*, 317 U. S. 264, 63 S. Ct. 233, and *Market Street R. Co.* v. *Railroad Comm. of California*, 324 U. S. 548, 65 S. Ct. 770, 89 L. Ed. 1171, to which can be added *Heike* v. *United States*, 217 U. S. 423, 30 S. Ct. 539, 54 L. Ed. 821, and *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 68 S. Ct. 972, 92 L. Ed. 1212, the exact character of the judgment of the Supreme Court of Florida emerges in unmistakable form. It does not dispose of the issues, terminate the litigation or afford the basis for execution to enforce what has been determined. It is not the final word of the highest court of the State or, in fact, any word except that Petitioner's complaint is premature. The

latter has, of course, the burden of affirmatively establishing this Court's jurisdiction. *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 62 S. Ct. 857, 86 L. Ed. 1090. The policy against premature constitutional adjudications demands that any doubts in maintaining this burden be resolved against jurisdiction. *Republic Natural Gas Co.* v. *Oklahoma, supra.* It is not met by a showing that the major issues in a case have been decided and only a few loose ends remain to be tied up, which is Petitioner's case in its most favorable light. The Republic Natural Gas case is controlling and indistinguishable.

All of the cases cited by Petitioner are plainly inapposite. In *Matlow* v. *Missouri*, 295 U. S. 97, 55 S. Ct. 661, 79 L. Ed. 1327, the Supreme Court of Missouri had *affirmed* a *final judgment* of the Circuit Court of the City of St. Louis. The order involved in *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528, was deemed appealable because it finally disposed of a right not an ingredient of the cause of action and entirely independent of it. In this case the issues of adequacy and new location are inseparable, and to decide one without the other would be as meaningless as the resolution to move home or business without heed to the cost or availability of a new location, indeed the Commission's remaining responsibility is equal to, if not perhaps even greater than, that which it has thus far discharged, requiring as it does, delicate adjustment between cost to the railroad and convenience to the public. *Stack* v. *Boyle*, 342 U. S. 1, 72 S. Ct. 1, 96 L. Ed. 3, reflects a necessary exception to the general rule, it being an application for bail in which relief to be effective had to be speedy. In *Swift & Co.* v. *Compania Colombiana*, 339 U. S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, the Court was confronted with an order dissolving an attachment on a boat, a

purely collateral issue and one which, if not immediately reviewed, would result in the release of the boat with only a theoretical possibility of restoring the attachment. *Roberts* v. *United States District Court*, 339 U. S. 844, 70 S. Ct. 954, 94 L. Ed. 1326, decided only that the denial by a District Judge of a motion to proceed *in forma pauperis* is an appealable order. *Department of Banking* v. *Pink, supra,* and *Market Street R. Co., supra,* hold against Petitioner and have already been discussed. In *Dickinson* v. *Petroleum Conv. Corp.*, 338 U. S. 507, 70 S. Ct. 322, 94 L. Ed. 299, the decree appealed from dismissed Petroleum's claims to certain property, thereby finally and conclusively destroying its asserted rights, hence the mere fact that the Court retained the case to decide who among the other parties should have the property did not alter the finality of the judgment as to Petroleum. In this case the claims of the Railroad are as much alive, so far as the Supreme Court of Florida is concerned, as they ever were. *Trustees* v. *Greenough*, 105 U. S. 527, 26 L. Ed. 1157, like *Cohen* v. *Beneficial Loan Corp., supra,* and *Swift & Co.* v. *Compania Columbiana, supra,* had to do with a collateral inquiry, distinct and independent in character from the case as a whole. Of *Carondelet Canal & Nav. Co.* v. *Louisiana*, 233 U. S. 362, 34 S. Ct. 627, 58 L. Ed. 1001, it seems enough to say that this Court in drawing the line between judgments final and judgments not final, placed Carondelet within the jurisdictional sphere and a commission case like this, where "the fate of the whole litigation may well be affected by the fate of the unresolved contingencies," outside of it. In *Hill* v. *Chicago and E. R. Co.*, 140 U. S. 52, 35 L. Ed. 331, the decree disposed of every matter of contention between the parties except one item, which was severable from the other subjects of controversy and did not affect their determination. And to the individual dif-

ferences of each case cited by Petitioner can be added a further distinction common to all, namely, that in every one of them the court which rendered the judgment actually heard, considered and on the merits rejected the contentions of the appealing party. Here the highest court of the State has merely pronounced the Railroad's claims premature, which in necessary effect is an invitation to their renewal at a later and appropriate occasion.

Petitioner's fear of penalties is wholly without substance. No action has been taken to inflict such sanctions; none is even threatened. Moreover, in Florida disobedience to an order of the Commission does not automatically result in liability for a penalty, which becomes effectual only through suit in which the Railroad may offer any valid defense, including the violation of constitutional rights. Section 350.28, Florida Statutes; *Atlantic Coast Line R. Co.* v. *State*, 94 Fla. 120, 114 So. 456. Respondents know full well that they cannot, after successfully contending before the State Supreme Court that this order is not final, claim that it is final for the purpose of enforcing a penalty. It is to be presumed that the Commission and the Florida Supreme Court will be equally consistent. Petitioner is the self-same litigant who established the embryonic character of a Commission order penalty-wise. *Atlantic Coast Line R. Co.* v. *State*, 94 Fla. 120, 144 So. 456. Its professed cause for alarm is difficult to understand.

Petitioner's final point, and the one upon which it most insists, concerns *City of St. Petersburg* v. *Atlantic Coast Line Railroad Company*, C. C. A. 5th, 132 F. 2d 675. This was an action in ejectment to establish title to and recover possession of the land upon which the freight station is located. It did not involve the passenger depot, which is five to six blocks away, and the only question ad-

judicated was whether the City, by repealing an ancient ordinance granting the Railroad the right to use the land for depot purposes, could deprive the Railroad of substantial investments made upon the strength of the original ordinance. Respondents have no quarrel with this case, concede that it was rightly decided, and disclaim (R. 1238) either the right or the intention of disturbing the Railroad's ownership of the land and existing facilities. Whether the judgment amounts to a perpetual license against regulation of the depots by a State agency in the exercise of its police power over a matter of purely local concern, no matter how obsolete, inadequate or obnoxious to the public interest they may become, is a question not decided by the Federal courts in the former litigation and are quite outside the scope of the issues or of its jurisdiction. For present purposes it is enough to know that the point remains unsettled in the present case and may be renewed upon the Railroad's appeal from the final order of the Commission. At that time, and with the aid of the evidence to be submitted at the next hearing, the Supreme Court can also compare present operating costs against those incurred at the new sites, study the value of the existing lands and buildings if retained by the Railroad for further use or if sold or leased for private purposes, explore the proposition that any loss resulting from an order to relocate is normally considered *damnum absque injuria*, *Railroad Commission of Alabama* v. *Northern Alabama Ry. Co.*, 182 Ala. 357, 62 So. 749; *Commercial Club of St. James* v. *Chicago, St. P., M. & O. Ry. Co.*, 142 Minn. 169, 171 N. W. 312, and *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission of California*, 209 Cal. 460, 288 Pac. 775, and from the overall and final picture, intelligently decide whether the Railroad has in fact lost anything for which the law affords compensation. From the judiciary's standpoint, the meaning and effect of *City of St. Petersburg* v.

Atlantic Coast Line Railroad Company, supra, are matters affecting the merits, some day to be decided, but not yet ripe for actual adjudication.

CONCLUSION.

The conclusion expressed in the petition (page 11):

> "and the Supreme Court of Florida declining to interfere because forsooth in its view the Florida Commission's order is not final under the Florida practice: it is suggested that this Court well might say now instead of later that it will not permit a judgment and opinion of a court of the nation to be so ignored."

confesses candidly that the Supreme Court of Florida declined to act because in its judgment the order of the Commission was not a final order within the Court's jurisdiction to review. In the face of this admission, the Railroad's petition for certiorari amounts only to an invitation for this Court to interfere with an administrative proceeding at an intermediate stage and in advance of the State Supreme Court's final word on the subject.

The correct conclusion, Respondents submit, is that the Supreme Court of Florida very properly decided that it had neither power nor discretion to supervise step by step the deliberations of the Railroad Commission and that in any event the judgment of the Supreme Court is neither in form nor effect a final judgment within proper concepts of 28 U. S. Code, Sec. 1257(3).

Respectfully submitted,

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